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OFFICE OF PETITIONS

In re Application of
Timothy B. Karpishin, et al.
Application No. 10/071,377
Filed: February 7, 2002
Attorney Docket No. 269/003

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:
: DECISION ON PETITION
: UNDER 37 CFR 1.137(b)

This is a decision on the petition, filed May 19, 2003, which is being treated as a petition under 37 CFR 1.137(b) to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country, or under a multinational treaty that requires publication of applications eighteen months after filing. *See* 37 CFR 1.137(f).

The petition is dismissed as **MOOT**.

Petitioner states that the instant nonprovisional application became the subject of a counterpart application filed in an eighteen-month country on February 7, 2003. A review of the file record discloses that a Notice to Rescind was received in the USPTO on January 31, 2003. It is noted that the person signing the request to rescind is not an attorney of record. However, in accordance with 37 CFR 1.34(a), the signature of Madeline I. Johnston appearing on the request to rescind constitutes a representation to the United States Patent and Trademark Office that she is authorized to represent the particular party in whose behalf she acts.

Where an applicant makes a nonpublication request under 35 U.S.C. 122(b)(2)(B)(i) and then rescinds (pursuant to 35 U.S.C. § 122(b)(2)(B)(ii)) the nonpublication request **before or on the date a counterpart application is filed in an eighteen-month publication country**, the nonpublication request will be treated as annulled and the application will be treated as if the nonpublication request had never been made. *See* Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. 122(b)(2)(B)(ii)-(iv), 1272 OG 1 (July 1, 2003), available at <http://www.uspto.gov/web/patents/patog/week26/>.

In the instant application, a notice to rescind was filed prior to the filing date of a counterpart application in an eighteen month publication country.

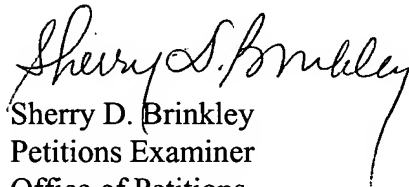
Therefore, since receipt in the USPTO of the request to rescind prior to the filing date of a counterpart application in an eighteen-month publication country resulted in the annulling of the nonpublication request, this application is not regarded as abandoned. As such, the filing of a petition to revive is unnecessary and is dismissed as involving a moot issue.

It is noted that the accompanying Associate Power of Attorney, requests a change of correspondence address to the address given in the instant petition. Since the Revocation and Power of Attorney filed October 3, 2002 was found unacceptable by a Notice mailed July 2, 2003, the person signing the Associate Power of Attorney does not possess power of attorney to appoint an associate in the above-identified application. If the person signing the instant petition desires to receive future correspondence regarding this application, the appropriate power of attorney or authorization of agent must be submitted. Under the circumstances of this case, a courtesy copy of this decision is being mailed to the person signing the petition. However, all future correspondence regarding this application will be directed to the address currently of record until such time as appropriate instructions are received to the contrary.

Since this application is not in fact abandoned, for the reason stated above, the petition fee of \$650 is being credited to petitioner's deposit account as authorized.

This application is being forwarded to Technology Center AU 1624 for examination in due course.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-9220.



Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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